

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

APR 19 2007

COURT OF APPEALS  
DIVISION TWO

KARINA C.,

Appellant,

v.

ARIZONA DEPARTMENT OF  
ECONOMIC SECURITY,  
ARIANNA C., and ADRIANNA C.,

Appellees.

2 CA-JV 2006-0050  
DEPARTMENT A

MEMORANDUM DECISION

Not for Publication  
Rule 28, Rules of Civil  
Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. MD-04-007

Honorable Kimberly A. Corsaro, Judge Pro Tempore

AFFIRMED

McMahon, Damon & McGuire  
By Matthew J. McGuire

Patagonia  
Attorneys for Appellant

Terry Goddard, Arizona Attorney General  
By Claudia Acosta Collings

Tucson  
Attorneys for Appellee Arizona  
Department of Economic Security

PELANDER, Chief Judge.

¶1 Karina C., mother of Arianna C., born June 3, 2002, and Adrianna C., born August 17, 2004, challenges the juvenile court's order terminating her parental rights on the

grounds of neglect and court-ordered, out-of-home placement for nine months or longer. *See* A.R.S. § 8-533(B)(2), (8)(a). Karina asserts that the Arizona Department of Economic Security (ADES) failed to use diligent efforts to provide her with appropriate reunification efforts and that there was insufficient evidence she had neglected a child and that termination of her rights was in the children's best interests. We affirm for the reasons stated below.

¶2 In May 2004, Child Protective Services (CPS) received a report that then-nearly-two-year-old Arianna had been physically abused. Dr. Johnathan Greenfield operated on Arianna because her intestines had been perforated. Arianna, up to that point, was being cared for by Karina, who was employed, and Karina's boyfriend, Miguel R., who was not employed and stayed at home. Miguel ultimately pled guilty to attempted child abuse. CPS took custody of Arianna at the end of May while she was still hospitalized and filed a dependency petition on June 3, 2004. In August, the juvenile court adjudicated Arianna dependent after Karina admitted allegations in an amended petition. She admitted, *inter alia*, that while Arianna had been in her care, the child had "suffered physical abuse" and that Karina had "lack[ed] the parenting skills to enable her to properly parent the child."

¶3 Adrianna was born in August 2004, and ADES filed a supplemental petition alleging she was at risk and dependent because of the severe physical abuse of Arianna. Adrianna was permitted to stay in the home briefly so she could bond with her mother. But CPS learned Karina was continuing to have contact with Miguel and removed Adrianna from

Karina's home in October 2004. In November, Adrianna was adjudicated dependent after Karina admitted allegations in an amended petition, including the allegation that she had "failed to protect her child Adrianna . . . from potential harm, by associating with a known child abuser."

¶4 In May 2005, the juvenile court held a permanency hearing. Karina was, at that point, complying with the case plan requirements substantially, though not completely; the court approved the plan for reunification and updated target dates for attaining that goal. But, by mid-summer, Karina's compliance became sporadic and, ultimately, minimal. Miguel was released from jail in July after serving a term there as a condition of probation, imposed after he was convicted of attempted child abuse. The two apparently continued their relationship even though it was plagued by physical and emotional abuse and violence. In August 2005, after a dependency review hearing, the juvenile court adopted ADES's recommended concurrent case plan of reunification and severance and adoption. As directed, ADES filed a motion for termination of the parent-child relationship at the end of September 2005. Karina's compliance with the case plan requirements continued to plummet. By October 2005, services were stopped because of Karina's failure to participate in them. Karina was arrested in November for transporting 134 pounds of marijuana.

¶5 After a four-day bench trial that took place in March, April, and May 2006, the juvenile court granted ADES's motion, terminated Karina's parental rights, and found by clear and convincing evidence, in relevant part, as follows:

The children have been in out-of-home placement for a cumulative total period of over nine months pursuant to court order.

Karina C[.] has substantially neglected or willfully refused to remedy the circumstances, which caused the children to be in out of home placement. The most significant circumstance that caused the children to be removed is the physical abuse inflicted by Miguel R[.] on Arianna, while Arianna was in the care of her mother, Karina C[.]. It was found that [Karina] lacked the parenting skills to enable her to properly parent. Her substance abuse and victimization of domestic violence contributed to [her] inability to properly parent and protect her children from harm.

In order to reunify with her children, [Karina] must address, among other things, her substance abuse and domestic violence issues, and then show that she is a fit and proper parent. [Karina] must be able to protect her children, while they are in her care. She could accomplish this goal by removing Miguel R[.] from her life and preventing him access to the children, or show that both she and Mr. R[.] have been sufficiently rehabilitated, such that the children are no longer in danger.

There has been no showing that Mr. R[.] has been rehabilitated and is no longer a danger to the children. Thus the only option for [Karina] to reunify with her children is to sever all ties to Mr. R[.].

The State has put forth evidence of full compliance [with] the case plan in the first approximately seven months by [Karina]. Thereafter compliance with the case plan began to drop off. [Karina] initiated contact with Mr. R[.] immediately after his release, and contact (including residing together) has continued off and on since. While [Karina] has shown progress and may be commended for completing the Intensive Outpatient Substance Abuse Program and the Domestic Violence Education Support Program, to date she has demonstrated an inability to sever her ties to Mr. R[.].

As recent as during the time of trial, [Karina] was asking her caseworker for assistance to move in with Mr. R[.]. [Karina]'s inability to sever her ties to Mr. R[.] makes her home unsafe for her children, and shows that her children's safety and best interests are not of primary concern.

¶6 Finding ADES had established by a preponderance of the evidence that it was in the children's best interests for Karina's parental rights to be terminated, the court severed those rights. In formal findings of fact and conclusions of law subsequently submitted by ADES and entered by the court in September, the court specified the kinds of services ADES had provided: "Case Management, counseling, Drug and Alcohol Screening, Drug and Alcohol Treatment Program, Individual and Family Counseling, Psychological/Psychiatric Evaluation and Recommendations, Supervised visitation, Parent aide Services, Transportation Services, Daycare Services, Home Studies, Comprehensive Medical and Dental Insurance, Coordination with Other Agencies, Financial Assistance, and Foster Care." And, in addition to terminating Karina's rights based on out-of-home placement for nine months or longer, *see* § 8-533(B)(8)(a), the juvenile court found she and Miguel had "neglected a child so as to cause substantial risk of harm to the child's health or welfare and such constitutes cause for termination of their parental rights pursuant to § 8-533(B)(2)."

¶7 On appeal, Karina does not challenge the juvenile court's findings that the children had remained out of her home pursuant to court order for nine months or longer and that Karina had substantially neglected or willfully refused to remedy the circumstances that caused the children to remain out of her home. Rather, Karina contends ADES did not fulfill its obligation to make reasonable efforts to reunify her with her children because it

failed to provide her appropriate reunification services and the juvenile court's findings to the contrary are erroneous. Karina essentially suggests ADES did not act aggressively enough to engage her in services, faulting caseworkers for not having enough "direct contact" with her. She suggests, too, that because of her extensive history of domestic violence, she had special needs, which she accused ADES of not addressing.

¶8 We will not disturb a juvenile court's order terminating a parent's rights unless the order is clearly erroneous. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). Thus, we will affirm a juvenile court's decision as long as there is reasonable evidence to support the order and the factual findings upon which it is based. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 2, 982 P.2d 1290, 1291 (App. 1998). Any statutory ground that is the basis for severance of a parent's rights must be established by clear and convincing evidence. A.R.S. § 8-537(B); *Mary Ellen C. v. Ariz. Dep't. Econ. Sec.*, 193 Ariz. 185, ¶ 25, 971 P.2d 1046, 1051 (App. 1999).

¶9 We note at the outset that repeatedly during the dependency proceeding, the juvenile court approved the case plan and found the services ADES was providing Karina were reasonable and appropriate to assist her in attaining the goal of reunification. Those findings remain unchallenged. Additionally, the record shows ADES provided Karina with the panoply of services the court listed in its order terminating Karina's rights. Ample evidence ADES presented at the severance hearing established the services were appropriate and were designed to reunify Karina with her children. It was through some of those services

that Karina's history of having been the victim of domestic violence came to light and was addressed.

¶10 For example, when Karina was evaluated initially at Southeastern Arizona Behavioral Health Services (SEABHS), her "history of choosing men that were domestically violent" was immediately noted. It was decided she needed treatment for resulting depression, emotional instability, and "disregulat[ion]" of her feelings. To address these problems, she was offered individual therapy and group therapy. She was also given parenting classes, family counseling, and "wrap around" services, a support group given by various SEABHS providers. Through SEABHS, Karina was provided classes on domestic violence. Initially, Karina failed to contact SEABHS, which delayed the start of classes until July 2005, and by September 2005, her caseworker reported Karina had only attended one class. Ultimately, she completed the classes. The evidence also established ADES had provided Karina a plethora of other services designed to address her issues with substance abuse and parenting.

¶11 Nothing in the record suggests Karina had any special needs that were not addressed. Nor did the evidence show she suffered from a disability or other challenges that may have rendered inappropriate the services offered or inhibited her from benefiting from them, had she chosen to do so. Psychologist Sergio Martinez testified, for example, that he had evaluated Karina in June 2004 at CPS's request to assess her "intellectual functioning and also to assess psychological functioning and . . . to the area of personality, behavior, [and] mood . . . to determine parental capacity, parental abilities, and to provide

recommendations for treatment.” He clarified that, by treatment, he meant facilitating Karina’s reunification with Arianna. In therapy, they addressed the fact that Arianna had been injured while in Miguel’s care, that Karina had failed to recognize Arianna had become anxious when she was around Miguel, and that bruises had appeared on her body before the incident that had resulted in Arianna’s removal from Karina’s custody. Martinez opined that Karina “possess[ed] sufficient reasoning ability to be able to detect” “possible ongoing abuse of Arianna.” He added that Karina’s intellectual ability was “within the average normal range,” and she had no “significant . . . cognitive” difficulties.

¶12 The CPS caseworker testified that when Karina’s compliance with the case plan requirements began to wane in February 2005, she had considered other services she could offer to reengage Karina, focusing on her substance abuse problem as possibly affecting her compliance. The caseworker thus referred Karina to intensive outpatient treatment. She explained to Karina that failure to comply with the case plan requirements could result in the termination of her parental rights to her children and their adoption and encouraged her to participate in the services being offered. At the caseworker’s suggestion, ADES requested that the court extend repeatedly the target date for reunifying the family. The caseworker further testified that if Karina had any special need, it was treatment for having been a victim of domestic violence, which was precisely why Karina had been provided domestic violence classes. And to the extent Karina had special needs as a young mother, having had Arianna while still in high school, the caseworker testified she had



received “wrap around services, which included the parent infant group . . . parenting classes” that were specifically designated for a young mother.

¶13 Karina’s suggestion that caseworkers were not sufficiently aggressive in their efforts to engage her in services is meritless. The services were offered, and on countless occasions, Karina simply did not show up for therapy sessions or classes, did not follow through as required, and did not take the initiative to avail herself of the services. The caseworker testified that when Karina’s compliance with the case plan began to slip by February 2005, the caseworker had attempted to reach Karina by telephone, letters, home visits, and attending supervised visits. The caseworker testified she had gone “to the visits . . . at times [to] try to talk to [Karina], try to reengage her in the services.” She added that she had “tried to ask [Karina] what was going on . . . [to] [s]ee if I could help, if there were additional services I could offer.” But, these efforts, the caseworker indicated, had been to no avail.

¶14 Similarly, the visitation specialist testified Karina had been referred to her in September 2005, but the specialist had found it extremely difficult to contact Karina. She first saw Karina in November after unsuccessful attempts to reach her. The witness testified she had “left messages with [Karina’s] mother . . . at her home, at her mother’s home and . . . spoke[n] to her once.” And Karina failed to show up at the CPS office so necessary documentation could be completed. The evidence thus showed ADES satisfied its obligation to provide services designed to reunify the family, and its efforts were reasonable. It is neither ADES’s responsibility nor within its power to assure a parent is successful. All

ADES can do is make the services readily available, which it did here. Ultimately, it is the parent's responsibility to avail herself of those services and alter the circumstances that cause a child to remain out of the parent's home. The juvenile court did not abuse its discretion by finding Karina failed to do so.

¶15 Karina also challenges the juvenile court's finding that the evidence established by a preponderance that termination of her rights to Arianna and Adrianna was in their best interests. Again, we find reasonable support in the record for that finding. The caseworker testified severance was in the children's best interests because, "[a]t this time[, Karina] has not demonstrated that she is able to protect her children or provide a safe environment for them." The plan, she added, was for the adoption of the children by the foster parents, with whom they were bonded. The caseworker's testimony and other evidence presented at the severance hearing, including the testimony of the children's therapist, established that the children's placement with the foster parents was appropriate and that they were thriving. Furthermore, the record contains ample evidence that Karina had failed to protect Arianna, had placed Adrianna in a potentially dangerous situation by maintaining her relationship with Miguel, and that she was in an abusive relationship with Miguel she could not sever, despite efforts to assist her in doing so. There was more than sufficient evidence to support this finding.

¶16 Karina also challenges the sufficiency of the evidence establishing she had neglected a child. But, because sufficient evidence supports the juvenile court's termination of Karina's parental rights pursuant to § 8-533(B)(8)(a), we need not address the sufficiency

of the evidence as to § 8-533(B)(2). *See In re Maricopa County Juvenile Action No. JS-501568*, 177 Ariz. 571, 575, 869 P.2d 1224, 1228 (App. 1994). In any event, we note there was ample evidence that Arianna was severely injured, that Karina had reason to suspect Miguel had been physically abusing the child, and that she had not protected the child from such abuse.

¶17 The juvenile court's order terminating Karina's parental rights to Arianna and Adrianna is affirmed.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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GARYE L. VÁSQUEZ, Judge